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*Attorneys for Tecumseh–Infinity Medical
 Receivable Fund, LP*

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA**

In re:
 INFINITY CAPITAL MANAGEMENT, INC.
dba INFINITY HEALTH CONNECTIONS,
 Debtor.

Case No. 21-14486-abl

Chapter 7

HASELECT-MEDICAL RECEIVABLES
 LITIGATION FINANCE FUND
 INTERNATIONAL SP,

Adversary Case No. 21-01167-abl

Plaintiff,

**TECUMSEH-INFINITY MEDICAL
 RECEIVABLE FUND, LP’S LIMITED
 OPPOSITION TO MOTION TO
 SUBSTITUTE PARTY AND RE-
 CAPTION CASE**

v.

TECUMSEH–INFINITY MEDICAL
 RECEIVABLES FUND, LP,

Defendant.

TECUMSEH–INFINITY MEDICAL
 RECEIVABLES FUND, LP,

Counter-Claimant,

Hearing Date: April 5, 2022

Hearing Time: 10:00 a.m.

v.

HASELECT-MEDICAL RECEIVABLES
 LITIGATION FINANCE FUND
 INTERNATIONAL SP; ROBERT E.
 ATKINSON, CHAPTER 7 TRUSTEE

Counter-Defendants.

ROBERT E. ATKINSON, CHAPTER 7
TRUSTEE,

Counter-Claimant,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

Defendant Tecumseh-Infinity Medical Receivables Fund LP (“**Tecumseh**”) hereby submits this opposition (the “**Opposition**”) to the motion of Robert E. Atkinson, Chapter¹ 7 trustee (“**Trustee**”), to substitute HASElect-Medical Receivables Litigation Finance Fund International SP’s (“**HASElect**”) in the place and stead of the bankruptcy estate in the above-captioned adversary proceeding.

The Opposition is made and based on the points and authorities provided herein, *Tecumseh-Infinity Medical Receivable Fund, LP’s Motion to Dismiss all Claims for Lack of Subject Matter Jurisdiction* (the “**Motion to Dismiss**”) filed contemporaneously herewith, the pleadings, papers, and other records on file with the clerk of the above-captioned Court, judicial notice of which is hereby respectfully requested, and the argument of counsel entertained by the Court at the time of the hearing of the Motion.

I. BACKGROUND

1. On February 8, 2022, the Court entered its *Order Approving Sale*, which approved the Trustee’s sale to HASElect of (i) whatever interest the estate had in the Disputed Accounts, including proceeds; (ii) all claims and causes of action that could be brought by the Trustee or the estate against any third party relating to the Disputed Receivables, including causes of action under Chapter 5 of the Bankruptcy Code; and (iii) books and records related to the foregoing (the

¹ All references to “Chapter” and “Section” shall be to title 11 of the U.S. Code (the “**Bankruptcy Code**”); all references to a “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure; and all references to “LR” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

1 “Assets”) free and clear of all liens, claims, and encumbrances of any third party other than
2 HASelect and Tecumseh. ECF No. 184.

3 2. On February 22, 2022, the Trustee filed his notice of that the sale was consummated
4 and the full purchase price was paid to the bankruptcy estate. ECF No. 190.

5 3. As a result of consummation of the sale, the Trustee seeks to substitute HASelect
6 in place of the Trustee as 1) defendant to Tecumseh’s counterclaim and 2) counter-plaintiff with
7 respect to the Trustee’s counterclaim against Tecumseh under Section 544(a) of the Bankruptcy
8 Code. In his Counterclaim, the Trustee seeks to avoid the alleged transfers of the Disputed
9 Receivables, contending that Tecumseh’s interest is not perfected under NRS 104.9310(1) and is
10 subordinate to the rights of a judicial lien creditor under NRS 104.9317, and seeks to preserve the
11 alleged transfers for the benefit of the estate under Section 551. See Trustee’s Counterclaim [ECF
12 No. 32], ¶¶ 22-31.

13 **II. LEGAL ARGUMENT**

14 Rule 25(c) of the Federal Rules of Civil Procedure allows a court, on a motion, to order the
15 transferee to be substituted in the action when an interest is transferred. Fed.R.Civ.P. 25(c). “The
16 decision to grant or deny substitution under Rule 25(c) rests within the sound discretion of the
17 court.” Copelan, 95 F. Supp. 3d at 1235 (citing Bernal, 207 F.3d at 598).

18 Rule 25(c) does not permit substitution with respect to the Trustee’s counterclaim in this
19 case because “Rule 25(c) is not designed to create new relationships among parties to a suit but is
20 designed to allow the action to continue unabated when an interest in the lawsuit changes hands.”
21 Copelan v. Techtronics Indus. Co., 95 F. Supp. 3d 1230, 1234-1235 (S.D. Cal. 2015) (citing In re
22 Bernal, 207 F.3d 595, 598 (9th Cir. 2000) (quoting Collateral Control Corp. v. Deal (In re
23 Covington Grain Co., Inc.), 638 F.2d 1362, 1364 (5th Cir.1981))).

24 Here, substituting HASelect for the Trustee with respect to the Trustee’s alleged avoidance
25 claim is not a mere formality because HASelect is not simply stepping into the shoes of the Trustee
26 to pursue the same claim. While HASelect seeks a determination that it holds a prior, perfected
27 security interest in all of the Accounts, the Trustee’s counterclaim seeks to displace HASelect by
28 avoiding the alleged transfers to Tecumseh and preserving the avoided transfers for the benefit of

1 the estate under Section 551 of the Bankruptcy Code. See HASElect's Amended First Amended
 2 Adversary Complaint [ECF No. 24], ¶ 60; Trustee's Counterclaim [ECF No. 32], p. 9.² The relief
 3 requested by the Trustee, *i.e.*, preservation of avoided transfers for the benefit of the estate, is now
 4 a nullity because HASElect is seeking relief solely for itself.

5 Furthermore, HASElect's purchase of the estate's alleged avoidance claim does not confer
 6 standing upon HASElect to pursue it. As set forth in Tecumseh's Motion to Dismiss, HASElect
 7 does not have statutory standing to pursue the alleged avoidance claim because it is not doing so
 8 on behalf of the estate or all creditors. See Briggs v. Kent (In re Prof'l Inv. Properties of Am.),
 9 955 F.2d 623, 626 (9th Cir. 1992) ("If a creditor is pursuing interests common to all creditors or is
 10 appointed for the purpose of enforcement of the plan, he may exercise the trustee's avoidance
 11 powers."); Duckor Spradling & Metzger v. Baum Trust (In re P.R.TC., Inc.), 177 F.3d 774, 782–
 12 83 (9th Cir. 1999) (a creditor may exercise a trustee's avoidance powers if allowing the creditor to
 13 exercise those powers will benefit the remaining creditors or the creditor is appointed for the
 14 purpose of enforcement of the plan); see also Texas Gen. Petroleum Corp. v. Evans (In re Texas
 15 Gen. Petroleum Corp.), 58 B.R. 357, 358 (Bankr. S.D. Tex. 1986) (creditor prosecuting the claims
 16 of the estate must act to the benefit of the estate as a whole).

17 Because HASElect does not have standing to pursue the Trustee's alleged avoidance claim
 18 against Tecumseh, substitution of HASElect in place of the estate with respect to the Trustee's
 19 Counterclaim should be denied.

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28 ² Section 551 provides that avoided transfer "is preserved for the benefit of the estate but only with respect to property of the estate."

1 Dated: March 22, 2022.

Respectfully submitted,

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24 4869-6780-8280, v. 2